IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Claim Numbers: HQ08X01180,
HQ08X01413
HQ08X01416
HQ08X03220
HQ08X01686

B E T W E E N:

(1) BISHER AL RAWI
(2) JAMIL EL BANNA
(3) RICHARD BELMAR
(4) OMAR DEGHAYES
(5) BINYAM MOHAMMED
(6) MARTIN MUBANGA

Claimants

and

(1) THE SECURITY SERVICE
(2) THE SECRET INTELLIGENCE SERVICE
(3) THE ATTORNEY GENERAL
(4) THE FOREIGN AND COMMONWEALTH OFFICE
(5) THE HOME OFFICE

Defendants

EXHIBIT LC10

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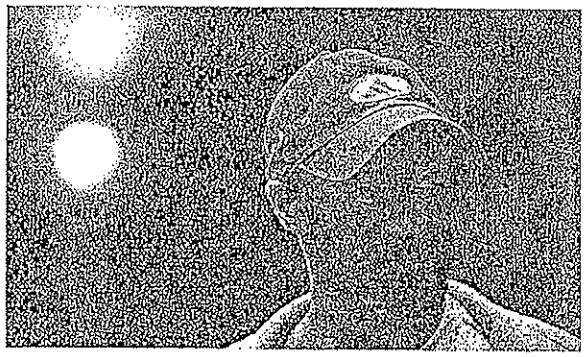
Report sheds light on role of UK ministers in overseas torture

New guidelines for operatives released as Foreign Office says it cannot reduce risk of torture to zero

Richard Norton-Taylor and Ian Cobain
guardian.co.uk, Wednesday 17 March 2010 23.45 GMT



The case of Binyam Mohamed, who was tortured in Afghanistan, Morocco and Guantánamo Bay, has thrown new light on ministers' possible role in sanctioning such activities. Photograph: Shaun Curry/AFP/Getty Images

The role of ministers in sanctioning activities by security and intelligence officers abroad which could be unlawful if carried out in Britain will be highlighted in guidelines published for the first time tomorrow, according to Whitehall officials.

The Intelligence and Security Committee, composed of peers and MPs handpicked by the prime minister, will release guidance drawn up for officers from MI5, MI6, and military intelligence.

The move comes amid growing evidence of their knowledge of the torture and inhuman treatment of British citizens and residents, notably of Binyam Mohamed, held as a terror suspect in Pakistan and tortured in Afghanistan, Morocco and Guantánamo Bay.

The Foreign Office warned tonight that Britain had to continue to work with foreign agencies in the fight against terrorism, even if they do not share UK standards on human rights. It said in its latest annual report on human rights that the UK could not afford the "luxury" of co-operating only with agencies in countries which did not abuse or torture detainees.

It said British agencies tried to minimise the risk that detainees held overseas were mistreated, but it was not always possible to "reduce the risk to zero".

The report said it was ultimately for ministers to decide whether the needs of national security outweighed the concerns of possible mistreatment.

David Davis, the former shadow home secretary, said the report revealed a "noticeably different strategy to the one the government have used to date".

He said: "All previous statements from ministers say we have confined ourselves to using any information we receive from foreign agencies known to use torture, not to actively seeking information. It is frankly not good enough to slip this out in two paragraphs of a 200-page report. If this is the change of policy it should be presented as such by the foreign secretary in the House of Commons, not smuggled out at five

o'clock."

NThe new guidelines for intelligence officers come a year after Gordon Brown first promised to release them. However, ministers have refused guidelines in use after the 11 September 2001 attacks on the US – which led to many of the cases of abuse – or those revised in 2004.

An MI5 officer, known only as witness B, is being investigated by the Met for "possible criminal wrongdoing" in connection with the Mohamed case. An MI6 officer is also being investigated by police over unconnected, but unknown, allegations.

The extent of ministerial knowledge of their activities remains unclear.

According to Sir Richard Dearlove, the former head of MI6, it is unlikely that British intelligence officers would have been involved in the abuse of terrorism suspects in the recent past without first receiving ministerial approval.

Asked by the human rights lawyer Philippe Sands QC, during an interview at the Guardian Hay festival last year, whether mounting evidence of British collusion in torture meant that MI5 and MI6 had received a ministerial green light, Dearlove replied: "That's a speculative question, [but] there should have been."

He added that the intelligence community was "sometimes asked to act in difficult circumstances," and that "when it does, it asks for legal opinion and ministerial approval ... it's about political cover".

A system for providing ministerial cover for criminal acts committed overseas was incorporated into the 1994 Intelligence Services Act, the same piece of legislation that created the ISC. Section seven of that act offers indemnity in UK criminal and civil law for crimes committed overseas, as long as a secretary of state has signed a warrant authorising that crime.

The section states: "If, apart from this section, a person would be liable in the United Kingdom for any act done outside the British islands, he shall not be so liable if the act is one which is authorised to be done by virtue of an authorisation given by the secretary of state under this section."

According to the Cabinet Office, the foreign, home or defence secretaries can sign such a warrant.

This clause has been described by some MPs as a "James Bond get-out clause". But according to those former ministers involved in the drafting of the act, it was never intended to facilitate torture.

ends

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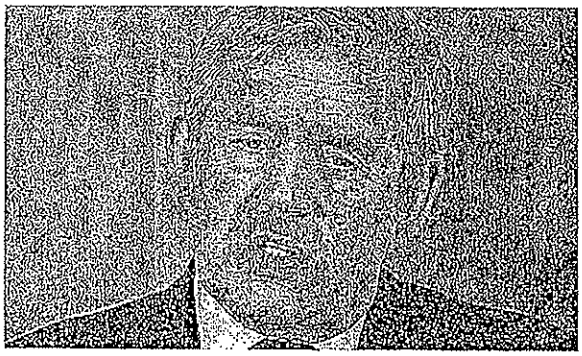
Gordon Brown breaks promise over torture guidelines

- PM criticised as official advice stays under wraps
- MPs call for more scrutiny of intelligence staff

Richard Norton-Taylor
guardian.co.uk, Thursday 18 March 2010 21.51 GMT



Gordon Brown's failure to publish new guidelines drew sharp criticism from the intelligence and security committee. Photograph: Dan Kitwood/Getty Images

Gordon Brown today broke a promise to publish new guidelines for British intelligence officers dealing with the torture and abuse of detainees held abroad after MPs and peers privately warned that existing guidance was unsatisfactory.

The prime minister was locked in a bitter dispute tonight with the parliamentary body set up to monitor the intelligence agencies over his refusal to publish its criticisms of the new guidance.

The Guardian has learned that members of the intelligence and security committee have expressed serious concern to Brown about the lack of clarity and "ambiguities" in the new guidance on interrogation techniques drawn up for MI5, MI6, and military intelligence officers after revelations in the Binyam Mohamed case.

The committee was assured by Brown last week that the guidance – and its own criticism of it – would be published before a Commons debate on the issue today.

His failure to do so drew sharp criticism from a committee whose members are hand picked by the prime minister. The dispute is compounded by a row between the committee and the government about plans for more effective overall scrutiny of MI5, MI6, and GCHQ, the government's electronic eavesdropping centre.

Michael Mates, the senior Conservative on the committee, told the Commons that the dispute was not "a matter of national security in any shape or form". Publication of the committee's criticisms had been put off was "because certain people think it is embarrassing", he said.

A Whitehall spokesman said that the committee's criticism had "raised a number of issues that need further consideration". The guidance is now unlikely to be published before the general election.

Brown has promised to publish the new guidance, drawn up after evidence, notably in the case of British resident and terror suspect Binyam Mohamed, that British security and intelligence officers were involved in the torture and cruel and inhuman treatment

of detainees.

The government has already declined to publish previous guidance in force when Mohamed and other British citizens and residents say they were abused and tortured. "If they cannot get the new guidance legal, what does it tell us about the old guidance?" said the former shadow home secretary David Davis.

William Hague, the shadow foreign secretary, and Ed Davey, the Liberal Democrat foreign affairs spokesman, called for a "judge-led inquiry" into the affair.

The government also came under fire yesterday over a Foreign Office report that said Britain had to continue to work with foreign security agencies against terrorism even if they do not share UK standards on human rights. The UK could not afford the "luxury" of co-operating only with agencies in countries that did not abuse or torture detainees, the report said.

"This clearly leaves the door open to UK complicity in torture," Human Rights Watch, an independent group, said yesterday. Sending the message to abusive governments that torture is acceptable in the name of fighting terrorism "runs counter to the absolute prohibition on torture which imposes obligations on states not only to refrain themselves from committing such abuse, but also to working towards the prevention and eradication of torture worldwide", the group said.

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New guidelines for intelligence officials

Role of ministers sanctioning security activities to be included

Richard Norton-Taylor and Ian Cobain
The Guardian, Thursday 18 March 2010

The role of ministers in sanctioning activities by security and intelligence officers abroad that could be unlawful if carried out in Britain will be highlighted in guidelines due to be published for the first time tomorrow, according to Whitehall officials.

The intelligence and security committee (ISC), composed of peers and MPs picked by the prime minister, is expected to release guidance drawn up for officers from MI5, MI6, and military intelligence.

The move follows growing evidence of the torture of British citizens and residents such as Binyam Mohamed, held as a terror suspect in Pakistan and tortured in Afghanistan, Morocco and Guantánamo Bay. Newly-drawn guidelines will be published a year after Gordon Brown first promised to release them.

However, ministers have refused guidelines in use after the 11 September 2001 attacks on the US, for British interrogators – which led to many of the cases of abuse – or those revised in 2004.

An MI5 officer, known only as Witness B, is being investigated by the Metropolitan police, for "possible criminal wrongdoing" in connection with the Mohamed case. An MI6 officer is also being investigated by the police over unconnected, but unknown, allegations.

The extent of ministerial knowledge of their activities remains unclear. According to Sir Richard Dearlove, the former head of MI6, said it was unlikely that British intelligence officers would have been involved in the abuse of terrorism suspects in the recent past without first receiving ministerial approval.Asked by the human rights lawyer Philippe Sands QC, during an interview at the Guardian Hay Festival last year, whether mounting evidence of British collusion in torture meant that MI5 and MI6 had received a ministerial green light, Dearlove replied: "That's a speculative question, [but] there should have been." He added that the intelligence community was "sometimes asked to act in difficult circumstances" and that "when it does it asks for legal opinion and ministerial approval. It's about political cover," he said.

A system for providing ministerial cover for criminal acts committed overseas was incorporated into the 1994 Intelligence Services Act, the same piece of legislation that created the ISC.

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Government refuses to publish criticism of new guidelines on overseas torture

Bitter dispute with committee handpicked by prime minister to oversee intelligence services

Richard Norton-Taylor
guardian.co.uk, Thursday 18 March 2010 12.57 GMT

The case of Binyam Mohamed, who was tortured in Afghanistan, Morocco and Guantánamo Bay, has thrown new light on the UK's role in sanctioning such activities. Photograph: Shaun Curry/AFP/Getty Images

The government is locked in a serious and bitter dispute with the parliamentary body set up to monitor MI5 and MI6 over the guidelines covering the torture and abuse of detainees held abroad, the Guardian has learned.

The dispute, compounded by a row about plans for more effective overall scrutiny of MI5, MI6 and GCHQ, has added significance since it has been sparked by a group of senior MPs and peers handpicked by the prime minister.

In a surprise move, the government is refusing to publish criticisms of new guidelines on interrogating prisoners, notably terror suspects, drawn up by the intelligence and security committee, the ISC.

A Whitehall spokesman said the government welcomed what he called the "critical contribution" of the committee in reviewing the guidance. He described it as "comprehensive and insightful", but it had "raised a number of issues that need further consideration".

The committee, chaired by the former Foreign Office minister Kim Howells, said its review of the guidance on handling detainees was sent to Gordon Brown on 5 March but publication was a "matter for the prime minister".

The ISC has been under fire for being too subservient to the security and intelligence agencies and to the prime minister, who chooses its members and has a veto over what the committee can publish.

However, the Guardian has learned that MPs and peers on the committee – perhaps stung by recent criticism – have expressed serious concern to Gordon Brown about the lack of clarity and "ambiguities" in the guidance for MI5 and MI6 officers operating abroad.

The Foreign Office said yesterday that Britain had to continue to work with foreign agencies in the fight against terrorism, even if they do not share UK standards on

human rights. It said in its latest annual report on human rights that the UK could not afford the "luxury" of co-operating only with agencies in countries which did not abuse or torture detainees.

It said British agencies tried to minimise the risk that detainees held overseas were mistreated, but it was not always possible to "reduce the risk to zero". The Foreign Office report said it was ultimately for ministers to decide whether the needs of national security outweighed concerns about possible mistreatment.

In its latest annual report, published today, the ISC also sharply attacks the government for rejecting its demand for more independence, specifically greater control over its expenditure and separation from the Cabinet Office, which oversees the work of the intelligence agencies on behalf of the government.

"Separation and independence are the key issues", said Howells. "We are therefore surprised and disappointed that the government's response to our report has failed to respond positively and kicks the issue into the long grass."

He added: "We now find ourselves in an inappropriate position whereby we sit within a government department which has a significant role in the UK intelligence community which we also oversee. The fact that the Cabinet Office also decides and allocates the committee's budget and employs our staff is another conflict of interest."

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21/03/2010

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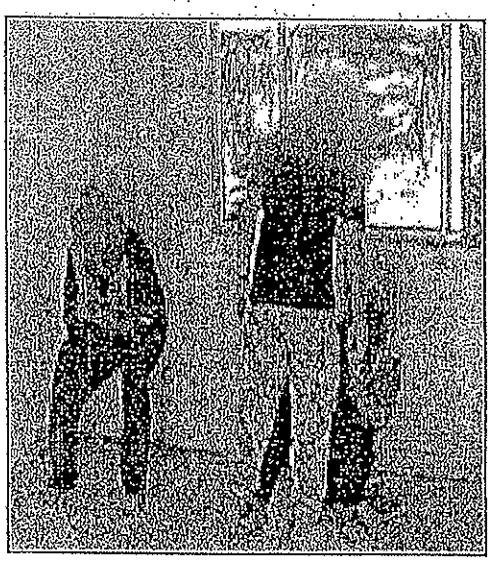
British military intelligence 'ran renegade torture unit in Iraq'

Secret operation 'reporting only to London' deprived prisoners of sleep, documents show

By Andrew Johnson



Fresh evidence has emerged that British military intelligence ran a secret operation in Iraq which authorised degrading and unlawful treatment of prisoners. Documents reveal that prisoners were kept hooded for long periods in intense heat and deprived of sleep by defence intelligence officers. They also reveal that officers running the operation claimed to be answerable only "directly to London".

The revelations will further embarrass the British government, which last month was forced to release documents showing it knew that UK resident and terror suspect Binyam Mohamed had been tortured in Pakistan.

The latest documents emerged during the inquiry into Baha Mousa, an Iraqi hotel worker beaten to death while in the custody of British troops in September 2003. The inquiry is looking into how interrogation techniques banned by the Government in 1972 and considered torture and degrading treatment were used again in Iraq.

Lawyers believe the new evidence supports suspicions that an intelligence unit – the Joint Forward Interrogation Team (JFIT) which operated in Iraq – used illegal "coercive techniques" and was not answerable to military commanders in Iraq, despite official denials it operated independently.

In a statement to the inquiry, Colonel Christopher Vernon said he raised concerns after seeing 30 to 40 prisoners in a kneeling position with sacks over their heads. He said those in charge said they were from the Defence and Intelligence Security Centre, based at Chicksands, Bedfordshire, the British Army's intelligence HQ.

He was informed that "they were an independent unit and reported directly to their chain of command in London". Hooding was "accepted practice" and would continue, he was told. "They reiterated the point they were an independent unit and did not come under the command of the GOC1 (UK) Armed Div (the Iraq command)," he said. Asked by the inquiry last week whether there was "some sort of feeling generally in the Army the intelligence people were slightly on their own and running their own show", Col Vernon replied: "I think you could say that."

In a second statement, Colonel David Frend, a British Army legal adviser in Iraq, said he was told by a senior military intelligence officer in London that "there was a legitimate reason for it [hooding], they had always done it and they would like to continue to do it." Col Frend said: "My recollection is that he said that they – ie those at JFIT – had been trained to hood. My understanding from the conversation was simply the use of hessian sandbags as hoods were something that had been taught to members of the JFIT at some point prior to deployment [to Iraq] and that it was not a unilateral act by them."

In a further email disclosed by the inquiry this week, Major Gavin Davies, a member of the Army's legal team, wrote in March 2003: "I have just spoken to S002 [code for an army intelligence officer in Iraq] about the subject of placing [prisoners] in hoods in the UK facility." He goes on to say that he was told that hooding is only until "high value" prisoners can be interviewed, and the length of hooding can last from an hour to 24 hours. The only other restriction, he wrote, "is that they may not sleep". Sleep deprivation is considered torture.

Chicksands has always denied that it trained soldiers to use hoods, claiming that there may have been some confusion with its "conduct after capture" training programme.

However, a further email from a military legal officer based at Permanent Joint Headquarters in Northwood, also published last week, stated: "I have heard that Chicksands have denied teaching hooding and suggested that there may be confusion in the minds of those who have completed the conduct after capture course during which students are hooded. I find this implausible. The people I have spoken to are not stupid. It seems to me more likely that hooding is taught but for actions immediately on capture or for prisoner handling."

In November, the human rights lawyer Phil Shiner, who represents Baha Mousa's family and forced the public inquiry, lodged a further 14 cases of abuse, naming JFIT. This is the first time that evidence to support the claims from the British military has emerged. There are now 47 claims of abuse lodged against the Government.

Yesterday Mr Shiner said: "It's been established that JFIT were a separate compound and their personnel were not accountable to a military chain of command. There is a mass of evidence from this and other cases which shows JFIT used coercive interrogation techniques – forbidden under law – as standard operating procedure. We need an independent inquiry to examine who was responsible."

A MoD spokesman declined to comment while the inquiry was ongoing.

Source: The Independent on Sunday

guardian.co.uk

Human rights alliance demands inquiry into UK torture role

Human rights groups and parliamentary body seek independent inquiry into involvement of MI5, MI6 and armed forces

Ian Cobain
The Guardian, Monday 22 March 2010

Human rights groups have joined forces with a group of British MPs to campaign for an independent inquiry into the UK's role in torture and rendition during the so-called war on terror.

Amnesty International UK, Human Rights Watch, Liberty and Reprieve have joined members of the all-party parliamentary group on extraordinary rendition in writing an open letter calling for an inquiry to examine the role played by MI5, MI6 and members of the British armed forces, and the use of British territory and airspace.

The demand comes five days after Gordon Brown reneged on his pledge to publish new guidelines for British intelligence officers dealing with the torture and abuse of detainees held abroad.

Brown promised in March last year to have the existing guidelines rewritten and then made public, after MPs and peers privately warned that the guidance was unsatisfactory. While following the guidelines, MI5 and MI6 officers have asked overseas intelligence agencies known routinely to use torture to detain terrorism suspects. The UK officers have then handed their foreign counterparts lists of questions, and carried out their own interrogations inside known torture centres.

Brown decided against publishing the new guidance amid concern among government lawyers and members of the intelligence and security committee (ISC) that it contained too many "ambiguities" even after it was redrafted.

Michael Mates, the senior Conservative on the committee, told the Commons on Thursday that publication of the ISC's criticisms of the rewritten guidelines had been prevented "because certain people think it is embarrassing". In today's letter, the four NGOs and the MPs say they are calling on the government to hold an independent inquiry because "the public should not have to rely on occasional speeches and lengthy judicial cases to discover the truth about such a serious issue".

They say the inquiry should be led by a judge or former judge; that it should be a public inquiry, with as much evidence as possible heard in public; that the head of the inquiry should decide which documents will be made public; and that it should report on any changes to the law or government policy that may be needed to prevent the UK's involvement in such abuse in the future.

Although the letter makes no mention of the question of immunity for anyone giving evidence, the human rights groups say an independent inquiry might shed light on the formulation of the policies that led to the UK becoming embroiled in torture and rendition, and the role played by ministers, without low-level intelligence officers, police and members or the armed forces facing prosecution.

Scotland Yard detectives are currently investigating an MI5 officer and an MI6 officer over allegations that they colluded in torture during counter-terrorism operations.

The Liberal Democrats' European justice and human rights spokeswoman, Sarah Ludford, said: "Given the grave nature of the allegations, accountability and truth about

what really happened is even more important than individual prosecutions."

Andrew Tyrie, chair of the all-party group, said: "The case for an inquiry is supported by almost everybody except the government, including Lord Carlile, the government's own independent reviewer of terrorism legislation, the joint committee on human rights, David Cameron, Nick Clegg and other experts in this field. This proposal offers a clear way forward. The government should take it.

"Every time a new revelation emerges, it is damaging for public confidence in the Security Services and for the reputation of the UK. We must be sure that we have got to the truth in order to be able to move on. A short, judge-led inquiry would be quicker, cheaper and far more effective in restoring the public's trust than allowing this corrosive state of affairs to continue. It is a mistake to imagine that this issue will – or should – go away on its own."

The government denied that a policy of complicity in torture had been in place, and said no wrongdoing had been covered up. A spokeswoman said: "It would be inappropriate to hold any inquiry while a number of legal processes are already under way. The Metropolitan police is investigating allegations of possible criminal wrongdoing. The UK courts are also examining these issues. Through these procedures, the allegations will be fully tested and the evidence assessed."

guardian.co.uk

Extraordinary rendition: the public must have the truth

The Guardian, Monday 22 March 2010

In the light of the string of recent revelations, the all-party parliamentary group on extraordinary rendition, Amnesty International UK, Human Rights Watch, Liberty and Reprieve have united to call on the government to establish an independent inquiry into the UK's involvement in extraordinary rendition and the mistreatment of detainees abroad. The public should not have to rely on occasional speeches and lengthy judicial cases to discover the truth about such a serious issue.

We propose that such an inquiry should examine, among other issues, the use of UK territory and airspace and the involvement of the intelligence agencies and the armed forces. The inquiry should be guided by the following statement of principles.

It should be led by a judge or former judge. It should benefit from appropriate legal representation on the inquiry's panel. This is essential to give the inquiry independence and legitimacy.

It should be public, with as much evidence as possible heard in public. The government should disclose all relevant documents to the inquiry, and the head of the inquiry must have the power to decide what should be made public.

It should aim to achieve maximum possible disclosure.

It should publish a report, making any necessary recommendations, including those on changes to the law and/or policy.

It should consider any other such matters as it considers appropriate, and accept and consider written submissions from interested parties.

All-party parliamentary group on extraordinary rendition, Amnesty International UK, Human Rights Watch, Liberty, Reprieve

UNITED KINGDOM

TIME FOR AN INQUIRY INTO THE UK'S ROLE IN HUMAN RIGHTS VIOLATIONS OVERSEAS SINCE 11 SEPTEMBER 2001

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AMNESTY
INTERNATIONAL

UNITED KINGDOM: TIME FOR AN INQUIRY INTO THE UK'S ROLE IN HUMAN RIGHTS VIOLATIONS OVERSEAS SINCE 11 SEPTEMBER 2001

Amnesty International believes that there is credible evidence that the UK has been involved in grave human rights violations perpetrated against people held overseas since the attacks in the USA on 11 September 2001 to warrant the establishment of an independent, impartial and thorough inquiry. Credible allegations implicate the UK in torture or other ill-treatment, unlawful detentions and renditions. Over the years, Amnesty International[1] and others have documented cases of the UK's involvement in these abuses, including:

- UK personnel were present at and participated in interrogations of detainees held unlawfully overseas in circumstances in which the UK knew or ought to have known that the detainees concerned had been or were at risk of being tortured and/or whose detention was unlawful;

- UK personnel provided information (e.g. telegrams sent by UK intelligence personnel to intelligence services of other countries) that led the USA and other countries to apprehend and detain individuals when the UK knew or ought to have known that these people would be at risk of torture and/or unlawful detention;

- The UK was involved in the US-led programme of renditions and secret detentions through, for example, the use of UK territory (e.g. Diego Garcia) and/or airspace;

- UK personnel forwarded questions to be put to individuals detained by other countries in circumstances in which the UK knew or ought to have known that the detainees concerned had been or were at risk of being tortured and/or whose detention was unlawful; and

- The UK systematically received information extracted from people detained overseas in circumstances in which it knew or ought to have known that the detainees concerned were being, had been or would be tortured and/or whose detention was unlawful.

Amnesty International believes that the UK's role in the abusive practices described above cannot be attributed exclusively to the actions or omissions of rogue UK agents. Policies and practices implemented in the aftermath of 11 September 2001 led directly to the UK becoming involved in grave violations of human rights committed against people held overseas. These policies and practices included:

- The UK government's failure to respond adequately to the serious violations of international humanitarian law documented in the February 2004 report by the International Committee of the Red Cross (ICRC);[2]

- The sending of UK intelligence and police personnel abroad to conduct or assist the interrogations of people held by other states in circumstances where the UK knew or ought to have known that both detention and questioning were not only unlawful, but may also have amounted to serious crimes under UK and international law, including complicity in torture on the part of the UK and possible criminal conduct on the part of individual UK agents;

- The refusal, for a substantial period of time, to oppose the unlawful detention of hundreds of people at the US Naval Base in Guantánamo Bay, Cuba, and the concomitant refusal to make adequate representations to the USA and other countries, on behalf of UK nationals and former UK residents who were held unlawfully at various locations around the world, including Guantánamo Bay;

- The sending of UK intelligence personnel to Guantánamo Bay to interrogate UK nationals and UK residents;

- The concealment until June 2004 of the fact that a number of the detainees questioned by UK intelligence personnel had in fact complained about their treatment in detention at the hands of US authorities at Guantánamo Bay and elsewhere (e.g. Afghanistan), and the subsequent refusal of the UK to provide any further detail about these complaints, including on how, if at all, they had been followed up in a manner consistent with the UK's human rights obligations under international law;

- The authorizations issued by the UK government to the security and intelligence agencies under section 7 of the Intelligence Services Act 1994,[3]which provides a waiver of liability to intelligence service personnel for illegal acts, including criminal offences, committed abroad in certain circumstances, and the concomitant concealment -- for "security reasons" -- of the number of times and the circumstances in which these authorizations have been granted since 11 September 2001;

- The incorrect assertion that there were only very limited circumstances in which domestic and international human rights law would apply to UK operations abroad, including in Afghanistan and Iraq;[4]

- The failure to disclose information in the UK government's possession that supported claims on behalf of former and current detainees that they had been tortured or otherwise ill-treated and that their confessions had been extracted under torture or other ill-treatment;

- The wilful or grossly negligent failure to maintain adequate records -- or any records at all -- with respect to the use of Diego Garcia by the USA for unlawful renditions, and the activities of the intelligence agencies; and

- The strenuous defence of the use, in domestic legal proceedings, of information extracted under torture from people held overseas by other countries.[5]

The UK government's response to these charges has primarily been one of denial and of hiding behind a wall of secrecy. The Chiefs of the UK's Secret Services (MI5 and MI6), the Home and Foreign Secretaries, the Prime Minister and the Chair of the Intelligence and Security Committee have in the past denied the UK's involvement in the torture of people held overseas. However, such denials fly in the face of credible evidence to the contrary that has continued to mount in recent years. Moreover, they appear to contradict the admission that authorizations under section 7 of the Intelligence Services Act 1994 have indeed been granted.

Further, the High Court of England and Wales confirmed in August 2008 that the UK, through its security service (MI5), had facilitated the interrogation of Binyam Mohamed in the knowledge that his initial detention in Pakistan was unlawful. Then, during a two-year period, the UK continued to facilitate interviews conducted on behalf of the US authorities

when it must have realized that Binyam Mohamed was being held unlawfully by a third country. Further, at that time the UK knew or ought to have known that there was a real risk that Binyam Mohamed was being tortured. The UK also knew that throughout this time the US had access to the information that was being obtained from Binyam Mohamed. Accordingly, in August 2008 the Court found that

> *....by seeking to interview* [Binyam Mohamed] *in the circumstances described and supplying information and questions for his interviews, the relationship of the United Kingdom Government to the United States authorities in connection with* [Binyam Mohamed] *was far beyond that of a bystander or witness to the alleged wrongdoing.*[6]

In the same judgment the Court ordered the UK Foreign Secretary to provide Binyam Mohamed's lawyers with evidence of the UK's knowledge of Binyam Mohamed's renditions, the identities of the US agents involved and the flights used, evidence of his arrest and subsequent treatment, evidence of the UK security service interview, and any information about Binyam Mohamed that had been provided by the UK to the USA. The UK government had resisted such disclosure.

On 4 August 2009, the UK parliamentary Joint Committee on Human Rights (JCHR) accused the UK government of being "determined to avoid parliamentary scrutiny" about its knowledge of the torture of terrorism suspects held by the intelligence services in Pakistan and elsewhere. The JCHR report said that an independent inquiry was the only way to restore public confidence in the intelligence and security agencies.

Days later, on 9 August 2009, the UK parliamentary Foreign Affairs Committee (FAC) raised concern about the UK's involvement in the torture and other ill-treatment of terrorism suspects held abroad. The FAC stated in its annual report: "there is a risk that use of evidence which may have been obtained under torture on a regular basis, especially where it is not clear that protestations about mistreatment have elicited any change in behaviour by foreign intelligence services, could be construed as complicity in such behaviour."

The UK authorities have not heeded calls for a full, independent, impartial and thorough investigation into the UK's role in grave violations of human rights perpetrated against people held overseas since 11 September 2001. They have failed to instigate human rights compliant investigations despite credible evidence that these violations were committed with the knowledge, complicity and, in some cases, in the presence of UK intelligence officers in a number of foreign countries.[7] The government has stated that the Intelligence and Security Committee (ISC) is the body that oversees the actions of the intelligence agencies. However, Amnesty International has voiced its concern over the years about the inadequacy of the ISC as an oversight body, chiefly because of its lack of independence from the UK executive.[8]

Amnesty International believes that the allegations of UK complicity in torture and other abuses of people held overseas are very serious and cannot be lawfully answered by sweeping denials.

Further, the organization considers that the forthcoming publication of the UK government's revised "Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees"[9] is not a substitute for an inquiry into credible allegations of past involvement

in securing and using intelligence information gained from the torture and other human rights violations of people held overseas since 11 September 2001.

In light of the above, Amnesty International urges the UK government to establish a full, independent, impartial and thorough inquiry into the role played by the UK in grave violations of human rights committed against people held overseas in the aftermath of 11 September 2001. Such an inquiry is long overdue.

There is a duty under domestic and international human rights law to conduct an independent, impartial, thorough and effective investigation into the involvement of the UK in these abuses.

Moreover, the UK authorities' perennial resort to secrecy in the name of protecting "national security" must not hinder attempts to uphold the rule of law and human rights. Amnesty International deplores the way in which the UK government has routinely invoked "national security" to shield itself from criticism of its human rights record.

Seven former detainees of Guantánamo Bay,[10] who are either UK nationals or UK residents, have sued the UK authorities for their alleged involvement in the human rights violations that they suffered over the years.[11] The seven men are challenging the UK's failure to institute an inquiry and are seeking redress, including compensation, for the wrongs they have suffered at the hands of the US and other foreign agents, and as a result of alleged acts or omissions of MI5, MI6, the Foreign & Commonwealth Office, the Home Office and the Attorney-General (the latter being sued only in a representative capacity). Each of the defendants is alleged to have caused or contributed to the detention of each claimant and his alleged ill-treatment by foreign authorities. Each claimant maintains that he was subjected to rendition and to torture or other ill-treatment during the course of his detention.[12] The UK authorities deny each allegation.

Thus far successfully,[13] the UK government has argued that, on "national security" grounds, each of the seven men, their lawyers of choice and the public should be excluded from a number of hearings which would be conducted behind closed doors and at which the UK authorities would present secret arguments to defend themselves against the seven men's claims.[14] Amnesty International considers that, through this procedure, the UK authorities are once again seeking to hide behind the cloak of secrecy to shield themselves from scrutiny and criticism of their human rights record.

Human security requires governments to keep people safe from a range of harms. The UK government's complicity in human rights violations committed overseas and its resort to secrecy -- under the guise of protecting "national security" -- to avoid scrutiny of these abuses have harmed individuals, prevented the emergence of the truth and obstructed efforts at accountability. Far from making anyone more secure, such actions undermine collective security by fostering impunity for, and the recurrence of, grave human rights violations.

Amnesty International calls on the UK authorities to desist from resorting to "national security" to cover up its involvement in human rights violations. The organization urges the UK government to commit itself to restoring respect for human rights and the rule of law, and making them instrumental to any efforts to combat terrorism and protect "national security".

Amnesty International believes that the time is long overdue for the facts surrounding the UK's involvement in cases such as those brought by the seven former detainees of Guantánamo to be put in the public domain, and for those responsible for grave human rights violations to be brought to justice. The organization calls on the UK government to establish immediately a human rights compliant commission of inquiry to investigate credible evidence implicating the UK in torture or other ill-treatment, unlawful detentions and renditions of people held overseas since 11 September 2001. It should also consider policies and practices that led to the UK becoming involved in these abuses. The inquiry should also make recommendations for genuinely independent scrutiny of the intelligence services, in order to ensure their full accountability. Such an inquiry should seek to answer, at a minimum, the following questions:

1. What have been the UK government's policies and practices in response to grave violations of human rights such as torture or other ill-treatment, enforced disappearances, renditions and unlawful detentions perpetrated by the USA and other states against people, including UK nationals, held overseas since 11 September 2001? Have they changed since then? If so, when, how and why?

2. In relation to seeking to obtain, receiving and using information that may have been extracted under torture or otherwise obtained unlawfully, what was the UK government's policy and practice prior to 11 September 2001? Have these changed since then? If so, when, how and why?

3. What steps did the UK government take when in 2003 the ICRC first raised concern about grave human rights abuses at the hands of Coalition Forces in Iraq, including in relation to torture practices at Abu Ghraib?

4. What were the terms of the agreement/s the UK signed at the request of the US administration in the aftermath of 11 September 2001 purportedly under the principle of collective defence under Article 5 of the North Atlantic Treaty?[15]

5. Were there further bilateral secret agreements on cooperation in the context of the US-led "war on terror" between the UK and the USA, and if so, what did they entail?

6. What oversight mechanisms were in place to ensure that adequate record-keeping was maintained with respect to counter-terrorism policy and practices? In cases where record-keeping was poor or non-existent, how does the government explain these inadequacies?

7. How many times since 11 September 2001, and precisely in what circumstances, have authorizations under section 7 of the Intelligence Services Act 1994 been issued?

8. What was the guidance regarding the role of the security services in the treatment and interviewing of detainees held overseas prior to 11 September 2001? Has it changed since then? And if so, when, how many times, in what respects, and why?

9. What has been the role of military intelligence agencies and agents in all and any of the above?

10. What has been the role of lawyers and civil servants in all and any of the above?

ENDNOTES

1 See, among others, the following Amnesty International documents: *United Kingdom: Rights denied – the UK's response to 11 September 2001*, AI Index: EUR 45/016/2002; *United Kingdom: Justice perverted under the Anti-terrorism, Crime and Security Act 2001*, AI Index: EUR 45/029/2003; *United Kingdom - Briefing for the Committee against Torture, AI Index: EUR 45/029/2004*; *United Kingdom: Amnesty International's submission of 14 October to the UK Parliament's Joint Committee on Human Rights in connection with the Committee's inquiry into the subject of "counterterrorism policy and human rights"*, AI Index: EUR 45/050/2005; *United Kingdom: Human rights - a broken promise*, AI Index: EUR 45/004/2006; *Europe: Partners in crime - Europe's role in US renditions*, AI Index: EUR 01/008/2006; *UK: Briefing to the Human Rights Committee*, AI Index: EUR 45/011/2008; and *State of denial: Europe's role in rendition and secret detention*, AI Index: EUR 01/003/2008.

2 In February 2004, the ICRC presented a report to the then Coalition Forces in Iraq (i.e. including to the UK) detailing a number of serious violations of international humanitarian law by these forces in Iraq, including brutality against protected persons during arrest and initial detention, sometimes causing death or serious injury, as well as various methods of torture and other ill-treatment inflicted on detainees. The report summarized concerns that had regularly been brought to the attention of the Coalition Forces throughout 2003. "In that sense the ICRC has repeatedly made its concerns known to the Coalition Forces and requested corrective measures prior to the submission of this particular report. Both for Abu Ghraib and for other places of detention in Iraq, oral and written interventions of the ICRC specifically recalled the laws and norms that States have committed themselves to respect by adhering to the Geneva Conventions."

3 Section 7(1) Intelligence Services Act 1994 provides: "If, apart from this section, a person would be liable in the United Kingdom for any act done outside the British Islands, he shall not be so liable if the act is one which is authorised to be done by virtue of an authorisation given by the Secretary of State under this section." According to s. 7(2), liable means liable under the criminal or civil law of the UK.

4 In 2004, for example, in its Conclusions and Recommendations upon its examination of the UK's report, the Committee against Torture expressed concern at "the State party's limited acceptance of the applicability of the Convention [against Torture] to the actions of its forces abroad, in particular its explanation that 'those parts of the Convention which are applicable only in respect of territory under the jurisdiction of a State party cannot be applicable in relation to actions of the United Kingdom in Afghanistan and Iraq'". Until its position was partially defeated by the Law Lords' judgment in the case of *Al-Skeini*, the UK government claimed that neither the European Convention on Human Rights (ECHR) nor the Human Rights Act 1998 was applicable to Iraq because Iraq was outside Europe and was not a party to the ECHR.

5 See, among others, *A and Others v Secretary of State for the Home Department*, [2005] UKHL 71.

6 *R (on the application of Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* [2008] EWHC 2048 (Admin), 21 August 2008, para. 88(v).

7 In March 2009, it was announced that the Metropolitan Police would begin an investigation into the allegations of possible criminal wrongdoing arising from the conduct of Witness B – a member of MI5 – in connection with the case of Binyam Mohamed. It has also been reported that the police are examining the role of MI5 in the case of Shaker Aamer, and an MI6 officer is under investigation over a UK resident illegally detained in Pakistan in 2002. To Amnesty International's knowledge, these are the only reportedly ongoing investigations.

8 The Intelligence and Security Committee (ISC) was established by the Intelligence Services Act 1994 to examine the policy, administration and expenditure of the Security Service (MI5), the Secret Intelligence Service (MI6) and Government Communications Headquarters (GCHQ). Its cross-party membership is made up of UK parliamentarians appointed by the Prime Minister "after considering nominations from Parliament and consulting with the leaders of the two main opposition parties". The ISC is not a Parliamentary Committee. It meets in private and does not discuss its work, other than through the publication of its reports. "For reasons of national security it reports to the Prime Minister, and all Committee reports are published by the Prime Minister". The ISC reports often feature redactions, "where the ISC has agreed, after careful consideration, that publication of the [un-redacted] material would harm national security". The ISC has been chaired by former members of the UK executive. In light of the above, and based on relevant domestic and

international human rights law and standards pertaining to the independence, impartiality, thoroughness and effectiveness of investigations into credible evidence of grave human rights violations, in particular the jurisprudence under Articles 2 and 3 of the ECHR, Amnesty International considers that the ISC is not endowed with adequate independence from the executive and that the ISC is not capable of fulfilling the above-mentioned stringent investigative requirements.

9 In a press release issued on 18 March 2010 to coincide with the Prime Minister's publication of the ISC report, the Committee states "In addition to our Annual Report, the Committee had hoped that today's debate would also cover its Review of the Government's Draft Guidance on Handling Detainees. We sent that review to the Prime Minister on 5 March 2010 and were assured that it would be published alongside our Annual Report today. We are therefore disappointed that the Government has delayed publication. We hope that Government will be in a position to publish both our Review and the revised Guidance itself in the very near future."

10 Bisher Al Rawi, Jamil El Banna, Richard Belmar, Omar Deghayes, Moazzam Begg, Binyam Mohamed and Martin Mubanga. They are bringing a test case and there are other potential claimants who, depending on the success or otherwise of their claim, may follow them in suing the UK authorities with similar claims.

11 Amnesty International and others have documented those violations, see footnote 1 *supra*.

12 The causes of action are not identical in each case. They include claims for false imprisonment, for trespass to the person, for conspiracy to use unlawful means, for conspiracy to injure, for torture, for negligence, for misfeasance in public office and for breach of the Human Rights Act 1998. There are also allegations that MI5 and MI6 are jointly involved in wrongful activities with foreign states, which are alleged to have unlawfully detained and mistreated the claimants.

13 See *Al Rawi and Others v The Security Service and Others*, [2009] EWHC 2959 (QB). An appeal of this decision was recently heard by Court of Appeal of England and Wales from which judgment is awaited.

14 A closed material procedure is unprecedented in the context of a claim for damages in UK courts. Information the disclosure of which the UK authorities claim would damage, among other things, "national security", would be relied on in Court. However, the said material would not be disclosed to the claimants or to their legal representatives of choice. Instead, Special Advocates would be appointed, who would, purportedly, represent the interests of the claimants, despite the fact that they could not receive instructions from them, let alone communicate with them, once they had sight of the closed material. The Special Advocates would obtain disclosure of the closed material which the Defendants would propose to use to contest the claimants' claim in closed (secret) hearings. Those are hearings from which the claimants, their legal representatives of choice and the public are excluded.

15 On 4 October 2001, the NATO Secretary General announced that "at the request of the United States" it had agreed measures "to expand the options available in the campaign against terrorism", including: enhanced intelligence sharing and co-operation; blanket overflight clearances for the US and other allies for military flights related to operations against terrorism; access to ports and airfields on NATO territory for support of counter-terrorism operations, including for refuelling; assistance to states "subject to increased terrorist threats as a result of their support for the campaign against terrorism"; increased security for US facilities on NATO territory; enhanced NATO support for counter-terrorism operations. However, the text of the actual agreement has never been made public; indeed, NATO refused to provide it to the Council of Europe, even on a confidential basis. Further, it appears that "additional components" not mentioned in the official announcement "have remained secret". The 2007 report by the Parliamentary Assembly of the Council of Europe found that rather than actually constituting an agreement for collective self-defence, the measures put in place by NATO members "comprise the very permissions and protections the United States had sought for itself as it embarked on its own military, paramilitary and intelligence-led counter-terrorism operations". Thus the NATO measures provided new opportunities for the CIA to operate covertly in Europe without appropriate scrutiny. Blanket overflight clearance for US military flights, access to airfields, and increased security for US facilities on NATO territory facilitated the CIA in conducting renditions in secret and with total impunity. The scope for such abuse only increased over time, as further bilateral agreements, including with non-NATO states, implemented similar terms. They too remain secret. See, Amnesty International: "State of Denial – Europe's Role in Rendition and Secret Detention" (AI Index: EUR 01/003/2008) June 2008.

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